

Understanding Use of Force

Policy¹

Officers shall not use physical force upon another person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances.

Officers will use, or allow to be used objectively reasonable force when force is used to accomplish lawful objectives necessary to:

- •
- Effect the lawful arrest or detention of a person;
- Prevent the escape from custody of a person; or
- Prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm;

Officers shall not use deadly force upon a person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to prevent imminent harm to a person and the amount of force used is proportionate to the threat of imminent harm.

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¹ 1.3.1

Adherence to All Applicable Laws

All of the provisions contained within this Bedford Police Department Use of Force Policy shall strictly adhere to all applicable statutory and constitutional provisions of federal, state, and local laws including but not limited to the holdings by the United States Supreme Court and the Massachusetts Supreme Judicial Court in:

- Graham v. Connor, 490 US 386 (1989)
- Tennessee v. Garner, 471 US 1 (1985)
- Comm. v. Adams, 416 Mass. 568 (1993)
- Comm. v. Klein, 372 Mass 823 (1977)
- Comm. v. Martin, 369 Mass 640 (1976)

Reasonable Standard

Reasonable Standard requires careful attention to the facts and circumstances of each particular case, including:

- Whether the suspect poses an immediate threat to the safety of the officer or others;
- The severity of the crime; and
- Whether the suspect is resisting arrest or attempting to evade arrest.
- Reasonable suspicion / Threshold Inquiries²

The standard allows for the fact that officers are often forced to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. The standard requires that the officer's actions are objectively reasonable in light of the facts and circumstances confronting them.

Use of Force Continuum

- Responses need not be exercised in progression.
- When feasible officers should advise subjects before any use of force.
- An officer must be aware of the following issues and the level of force they may represent:
 - ➤ Mere Presence of an officer or officers,
 - The presence and / or use of a canine (K-9),
 - Presence of a marked cruiser or cruisers (with or without emergency lights activated).

² Terry v. Ohio 495 U.S. 1 (1967)

Use of Force Model



Force Escalation

Escalating the level of force may be necessary given resistance levels and circumstances. Factors in this decision include, but are not limited to:

- Subject vs. officer relative age, size, physical condition, skill level;
- Drugs and alcohol;
- Weapons type, proximity;
- Seriousness of offense;
- Exigent circumstances;
- Number of potential assailants vs. number of police on the scene;
- Other options available.

Medical Aid³

After the detainee is secured safely, officers shall administer and secure medical aid after any use of force, if necessary. This includes lethal, less lethal and weaponless uses of force. The Officer-in-Charge shall immediately respond to the scene of any incident where, as a result of the application of physical force, an officer is injured, or a detainee has a visible injury, or complains of injury or discomfort and requests medical attention.

³ 1.3.5

Chokehold

Officers shall not use a chokehold. (see Definitions)

Officers shall not be trained to use a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing or blood flow.

Duty to Intervene

An officer present and observing another officer using physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances, shall intervene to prevent the use of unreasonable force unless intervening would result in imminent harm to the officer or another identifiable individual.

An officer who observes another officer using physical force, including deadly force, beyond that which is necessary or objectively reasonable based on the totality of the circumstances shall report the incident to the Officer-in-Charge as soon as reasonably possible but not later than the end of the officer's shift.

The officer shall prepare a detailed written statement describing the incident as an administrative To/From Memorandum (not to be part of the incident report in the Records Management System.) The officer's written statement shall be included in the Officer-in-Charge's administrative To/From Memorandum (not to be part of the incident report in the Records Management System) and given to the Patrol Lieutenant and Chief of Police.

Retaliation for a Duty to Intervene Report

An officer reporting on a Duty to Intervene shall do so without fear of retaliation or actual retaliation.

Any officer who retaliates in any way against an officer who reports such interventions **shall be immediately placed on administrative leave** pending a thorough investigation regarding the retaliation.

The Chief of Police will immediately open an internal affairs investigation according to our *Professional Standards Policy (Chapter 55-1)*.

Any officer is found responsible for committing such retaliation will be disciplined to the full extent of the department up to and including termination and any laws pertaining to such retaliation.

Termination of Use of Force

Officers are further trained that whenever a particular force option is utilized against an individual who fails to comply with the reasonable and lawful commands of the officer(s), that particular force option shall terminate, when it is deemed to be objectively reasonable that a subject is fully within the law enforcement officers' control.

Planned Mass Demonstration

When the Bedford Police Department has advance knowledge of a planned mass demonstration, the Chief shall designate a person to attempt in good faith to communicate with organizers of the event to discuss logistical plans, strategies to avoid conflict and potential communication needs between police and event participants.

See All Hazards Plan - Civil Disturbances (Chapter 46-14)

The department shall make plans to avoid and de-escalate potential conflicts and designate an officer in charge of de-escalation planning and communication about the plans within the department.

- A law enforcement officer shall not discharge or order the discharge of tear gas or any other chemical weapon, discharge or order the discharge of rubber pellets from a propulsion device or release or order the release of a dog to control or influence a person's behavior unless:
 - (i) De-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances; and
 - (ii) The measures used are necessary to prevent imminent harm and the foreseeable harm inflicted by the tear gas or other chemical weapon, rubber pellets or dog is proportionate to the threat of imminent harm.
- If an officer utilizes or orders the use of tear gas or any other chemical weapon, rubber pellets or a dog against a crowd, the Chief shall file a report with the commission detailing all measures that were taken in advance of the event to reduce the probability of disorder and all deescalation tactics and other measures that were taken at the time of the event to de-escalate tensions and avoid the necessity of using the tear gas or other chemical weapon, rubber pellets or dog.
- The commission shall review the report and may make any additional investigation. After such review and investigation, the commission shall, if applicable, make a finding as to whether the pre-event and contemporaneous de-escalation tactics were adequate and whether the use of or order to use such tear gas or other chemical weapon, rubber pellets or dog was justified.

Less Lethal - Use of Force

Policy⁴

Officers shall not use physical force upon another person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to:

- (i) Effect the lawful arrest or detention of a person;
- (ii) Prevent the escape from custody of a person; or
- (iii)Prevent imminent harm and the amount of force used is proportionate to the threat of imminent harm;
- provided, however, that a law enforcement officer may use necessary, proportionate and non-deadly force in accordance with the regulations promulgated jointly by the commission and the municipal police training committee pursuant to subsection (d) of section 15.
- Subsection (d) of section 15:
 - The POST commission and the municipal police training committee established pursuant to section 116 of chapter 6 shall jointly promulgate rules and regulations for the use of force by law enforcement officers consistent with this section and section 14; provided, however, that such regulations may authorize the use of necessary, proportionate and non-deadly force for purposes not explicitly specified in this chapter where de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances.

Officers are authorized to use less lethal force in order to:

- Protect themselves or others from physical harm;
- Control a resisting subject;
- Effect an arrest;
- Bring an unlawful situation safely and effectively under control;
- Place someone in protective custody;
- To preserve the peace, prevent the commission of offences, or prevent suicide or self-inflicted injury.

NOTE: Officers should assess each situation to determine which less lethal technique will best bring the incident under control, using that amount of force, which is reasonable.

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^{4 1.3.4}

Verbal Commands

Commands and gestures should be designed to:

- Effect compliance; and
- Express the meaning or seriousness of the officer's intent.
- To diffuse or de-escalate the situation.

When more than one officer, only one person should be giving the commands.

Contact Controls and Compliance Techniques

Control techniques may be used to achieve compliance and/or control of an uncooperative subject. These techniques include:

- Physical manipulations such as escort positions, come-a-longs, take downs, wrist locks, etc.
- Temporary restraints; such as handcuffs
- Baton (as trained).

OC or ECW Deployment

OC spray or an Electronic Control Weapon (Laser Activation, Spark Display or Drive Stun ONLY) may be used in situations involving:

- Assault; or,
- Active resistant subject:
 - 1. Verbal commands have failed to bring about compliance; and
 - 2. Subject has signaled his/her intentions to actively resist.

Striking Techniques⁵

Striking techniques or an Electronic Control Weapon (Laser Activation, Spark Display, Drive Stun or Probe Mode) may be used to achieve compliance and/or control of an assaultive (bodily harm) subject. These techniques include:

- Weaponless Strikes, defined as empty handed strikes or strikes using parts of the human body, as well as physical force techniques, including distraction techniques that are those techniques an officer feels necessary to use to effect "Take Down and Control Holds" by generally using their hands.
- Tools of Immediate Means.
- 40mm Launcher (as trained).

Electronic Control Weapon Deployment

If deployed, ECW cycles shall be limited to the minimum number of deployments necessary and should last no longer than necessary to bring an individual under control.

 $^{^{5}}$ 1.3.6 (d) also "Use of Force Reporting" in this policy.

Lethal - Use of Force

Policy⁶

Officers shall not use deadly force upon a person unless de-escalation tactics have been attempted and failed or are not feasible based on the totality of the circumstances and such force is necessary to prevent imminent harm to a person and the amount of force used is proportionate to the threat of imminent harm.

Officers may use lethal force only when the officer reasonably believes that the action is:

- In defense of human life, including the officer's own life, or in defense of any person in imminent danger of serious physical injury.
- If feasible a warning should be given prior to the use of lethal force;

> Preferred Warning – "Police – Don't Move!"

Parameters for the use of lethal force when effecting an arrest:

- 1. The arrest if for a felony;
- 2. The officer reasonably believes that:
 - a. The force employed creates no substantial risk of injury to innocent persons; and
 - b. The crime for which the arrest is made involved the use or attempted use, or threatened use of lethal force; and
 - c. There is a substantial risk that the person to be arrested will cause death or serious physical injury if his/her apprehension is delayed.

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⁶ 1.3.2

Definitions

Reasonable Belief – The facts and circumstances the officer knows, or should know, are such as an ordinary and prudent person to act or think in a similar way under similar circumstances.

Serious Physical Injury – A bodily injury that creates a substantial risk of death; causes serious, permanent disfigurement; or results in long-term loss or impairment of the functioning of any bodily member or organ.

Objectively Reasonable - This term means that, in determining the necessity for and appropriate level of force, officers shall evaluate each situation in light of the known circumstances, including, but not limited to, the seriousness of the crime, the level of threat or resistance presented by the subject, and the danger to the officer, subject, and/or community. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on scene, rather than with the 20/20 vision of hindsight. Determining reasonableness of force must allow for the fact that police officers are forced to make split second judgments in circumstances that are tense, uncertain and rapidly evolving. The force used must be reasonable under the circumstances known to the officer at the time force is used.

Chokehold - The use of a lateral vascular neck restraint, carotid restraint or other action that involves the placement of any part of law enforcement officer's body on or around a person's neck in a manner that limits the person's breathing or blood flow with the intent of or with the result of causing bodily injury, unconsciousness or death.

De-escalation tactics - Proactive actions and approaches used by an officer to stabilize a law enforcement situation so that more time, options and resources are available to gain a person's voluntary compliance and to reduce or eliminate the need to use force including, but not limited to, verbal persuasion, warnings, slowing down the pace of an incident, waiting out a person, creating distance between the officer and a threat and requesting additional resources to resolve the incident, including, but not limited to, calling in medical or licensed mental health professionals, as defined in subsection (a) of section 51½ of chapter 111, to address a potential medical or mental health crisis.

Deadly force - Physical force that can reasonably be expected to cause death or serious physical injury.

Definitions *Cont'd*

Officer-involved injury or death - Any event during which an officer:

- (i) Discharges a firearm, as defined in section 121 of chapter 140, actually or proximately causing injury or death to another;
- (ii) Discharges any stun gun as defined in said section 121 of said chapter 140, actually or proximately causing injury or death to another;
- (iii) Uses a chokehold, actually or proximately causing injury or death of another;
- (iv) Discharges tear gas or other chemical weapon, actually or proximately causing injury or death of another;
- (v) Discharges rubber pellets from a propulsion device, actually or proximately causing injury or death of another;
- (vi) Deploys a dog, actually or proximately causing injury or death of another;
- (vii) Uses deadly force, actually or proximately causing injury or death of another;
- (viii) Fails to intervene, as required by section 15, to prevent the use of excessive or prohibited force by another officer who actually or proximately causes injury or death of another; or
- (ix) Engages in a physical altercation with a person who sustains serious bodily injury or requests or receives medical care as a result.

Serious bodily injury - Bodily injury that results in:

- (i) Permanent disfigurement;
- (ii) Protracted loss or impairment of a bodily function, limb or organ; or
- (iii) A substantial risk of death.

Use of Firearms Firearm use is to be governed by the following:

Allowed Use	Not Allowed Use
Firearms may be discharged:	Firearms shall <u>not</u> be discharged:
• The lawful performance of	• As a warning. ⁷
duties.	• Into or at a fleeing motor vehicle
 When doing so will not 	unless, based on the totality of the
unreasonably endanger	circumstances, such discharge is
innocent persons.	necessary to prevent imminent harm
• On or off duty training or	to a person and the discharge is
target practice at a training	proportionate to the threat of
range.	imminent harm to a person.
• Rendering harmless an animal	• From a moving motor vehicle –
that represents a threat to	unless there is imminent threat of
public safety or is seriously	death or serious injury to the officer
injured and suffering.	or others without taking evasive
	action, if possible.
	To threaten or subdue persons
	whose actions are destructive to
	property or harmful only to them,
	unless such actions constitute an
	imminent threat of death or serious
	bodily injury to the officer or others
	To disable a vehicle.
	• To apprehend a fleeing felon unless
	(see below)

Fleeing Felons

Firearms shall **not** be discharged to apprehend a fleeing felon unless:

- 1. It is for a felony that involved the use or threatened use of deadly force, and
- 2. Escape would result in imminent death or serious bodily injury to the officer or another if the apprehension is delayed.

⁷ 1.3.3

Use of Force Reporting

Policy

A use of force report shall be submitted and reviewed for every reportable incident. The review committee will yearly review all Use of Force Reports.

Reportable Incident

The involved officer(s) shall submit a separate written *Use of Force Report* (*Form UOF-001*) in addition to any other report required, when:

- Any incident regarding the use of issued or authorized firearms or ammunition by any officer or employee, whether accidental or intentional and whether on or off duty. (Obvious exceptions are during the lawful performance of duties and activities such as, but not limited to: Range Officers, Armorer, Ballistician, training and hunting.⁸
- A firearm or Electronic Control Weapon is withdrawn and pointed or aimed at an individual or group.
- A striking technique is used including weaponless strikes⁹,
- OC is deployed,
- The use of force or any action that did cause or is reported to have caused injury or death to another¹⁰;
- The use of any technique in which the officer applies force to an individual that may cause pain or injury; or
- Any weapon used (lethal or less lethal)¹¹.

⁸ 1.3.6 (a)

^{9 1.3.6 (}d) also "Striking Techniques" from this policy (Weaponless Strikes – definition)

¹⁰ 1.3.6 (b)

¹¹ 1.3.6 (c)

Report

Unless otherwise authorized by the Chief of Police or his designee, a Use of Force report shall be completed and submitted to the Officer-in-Charge before the end of the duty shift. This report will contain the names and copies of any reports and policies from any assisting out-of-town officers.

- The Officer-in-Charge will give a reviewed copy of this report to the Patrol Division Lieutenant.
- The Patrol Division Lieutenant will administratively review each report (including every individual report where an officer's use of force results in the actual or alleged death or serious bodily injury of another person) unless involved in the incident, if so, the Detective Division Lieutenant or the Chief of Police will perform the administrative review.¹²
- A copy of the Use of Force review, after administrative review, will be given to the department prosecutor.
- An officer who is unable to submit a report due to injury shall file the report as soon as he/she is physically able.
- The Use of Force Report shall explain in detail the circumstances surrounding the incident and shall be separate from any other required reports.
- If an Electronic Control Weapon is deployed the following additional information shall be included in the report form:
 - o Number of discharges and length of discharge;
 - o Location of probes on the subject's body.
- The Officer-in-Charge shall secure the ECW in the OIC gun cabinet and notify Sgt. Vitale.
- Sgt. Vitale shall download the data as per the manufacturer instructions to be included with the *Use of Force Report (Form UOF-001)* and external reporting to include:
 - o The Executive Office of Public Safety and Security (EOPSS) ECW Use Reporting Form is completed and submitted as required by EOPSS in accordance with M.G.L. c. 140, § 131J and St. 2004, c. 170, s.2;
 - o Forward a copy of the EOPSS ECW Use Reporting Form to the Deputy Superintendent.

¹² 1.3.7

Archives

The Patrol Division Lieutenant will be responsible for the storage/archive of all Use of Force Reports and findings in the Patrol Division Lieutenant's file cabinet¹³.

¹³ 1.3.6 File Location

Response to Lethal Use of Force

Policy

Every incident where any employee, whose actions, use of force or firearms discharge in an official capacity results in serious physical injury or death shall require the department to immediately respond to the scene and conduct an investigation.

Public Information

During the course of the investigation, no police personnel will give any detailed information concerning the incident to any members of the public or news media without the express authority from the Chief of Police. In no case shall any information which is prejudicial to any party be released prior to the completion of the investigation. (See News Media and Public Information Officer Policy Chapter 54-1)

Officer Involved

At the scene the officer shall:

- Request emergency medical aid; 14
- Promptly notify the dispatcher, Officer-in-Charge;
- Unless Injured, remain at the scene and protect and secure it to the extent possible, pending the arrival of the appropriate investigators and;
 - If the circumstances are such that the continued presence of the officer at the scene might cause a more hazardous situation to develop (unruly / violent bystanders / crowd), that the officer should be transported to another, more appropriate location.
- Protect the firearm and / or ammunition for examination and submit said items to the appropriate investigator;
- The firearm should be surrendered only to another police officer, unless otherwise instructed by the Officer-in-Charge; The officer should refrain from speaking or discussing the incident with anyone except those directly involved or legal counsel.
- Prepare a detailed report of the incident in a timely manner (one sleep cycle allowing at least 24 hours from initial incident);
- The officer should be available, at reasonable times, for interviews and statements regarding the incident.

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¹⁴ 1.3.5

Dispatch

The emergency communications officer shall:

- Immediately notify the Officer-in-Charge
- Dispatch sufficient number of officers to the scene;
- Make all appropriate, accurate and complete administrative computer entries;
- Politely refer all media requests for information to the Public Information Officer or John Guilfoil Public Relations LLC at 617-993-0003 (see News Media and Public Information Officer Policy Chapter 54-1)

Officer in Charge

Officer in Charge should:

- Insure medical attention is considered and given if necessary.
- Respond to the scene.
- Insure that the Division Lieutenant is notified.
- Insure that the Chief of Police is notified.
- Take control of the firearm or weapon used until the proper reports have been filed and a preliminary investigation has been completed.
 - This should be done in a discrete manner and out of the public's view.
 - ➤ Whenever possible, the officer's firearm should be replaced by another firearm.
 - Ensure proper chain of custody of the impounded weapon until it is placed in the custody of the State Police crime lab personnel;
- The involved employee will be given the opportunity to call his/her family as soon as possible to avoid the possibility of their learning about the incident through other than official sources, e.g., press, radio, television, etc.
- Make all resources, facilities and personnel of the department available to the assigned investigators;
- Ensure that the involved officer(s) is provided with appropriate Federal and State civil rights protection;
- Politely refer all media requests for information to the public Information Officer. (see News Media and Public Information Officer Policy Chapter 54-1);
- Interview all injured parties, if possible, to ascertain the circumstances involved in the shooting;
- Assign a sufficient number of officers to secure the scene of the shooting to preserve physical evidence and request the assistance of investigators and / or crime scene technicians as appropriate;
- Notify the Middlesex District Attorney's Office whenever the use of force results in the death of any person.
- File a preliminary report prior to the conclusion of their tour of duty and file a complete detailed investigative report to the Chief of Police upon the completion of the investigation.
- Immediately remove the officer or employee from the line-duty assignment and assign the officer(s) to temporary administrative duties pending the administrative review of the incident¹⁵.

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¹⁵ 1.3.8

Police Chief Police Chief should:

 Use his/her discretion of placing the involved officer(s) on administrative duty or administrative leave pending the completion of an investigation of the incident.

- In those incidents of the use of lethal force / firearms where a death results, the District Attorney's Office, pursuant to the terms of MGL c.38 s.6, shall be notified forthwith and shall assume control of the investigation;
- Ensure a thorough investigation was conducted and that all reports were prepared and submitted;
- Review all reports to determine whether the use of force was in compliance with department policies and procedures;
- Require any officer(s) involved in an incident resulting in the death or serious bodily injury of another to attend a psychological debriefing. This shall be confidential.
- Call anyone of the following:
 - 1. Chandler Street Associates, Dr. John Madonna;
 - o Day telephone number: (508) 757-7430 or (617) 739-7171.
 - o Night Telephone number: (508) 755-8559.
 - 2. Massachusetts State Police Stress Unit Call HQ at (508) 820-2121
 - 3. Boston Police Stress Support Unit Call HQ at (617) 482-1212

Use of Force Review Committee

Policy

Annually an appointed review committee shall review all Use of Force reports and document their findings in a written report.

Members

The review committee will include:

- The patrol division commander,
- The detective division commander.
- The department's firearms instructor,
- The Accreditation Manager, and
- A union representative.

Committee Duties

The Accreditation Manager will set up the Review Committee yearly review:

- When appointed the Review Committee shall review and, if necessary
 investigate the incident in order to determine if the use of force was in
 compliance with departmental policy. The report of findings will be
 submitted to the Chief of Police for appropriate action.
- The Use of Force Committee will review all Use of Force reports and document their findings in a written report¹⁶.
- The report of findings should include the relevant facts and circumstances surrounding the incident, and at a minimum the following areas should be examined:
 - > Tactical considerations
 - > Training considerations
 - Quality of supervision
 - > Department policy and procedures
 - > Investigative process and quality
 - The committee will make recommendations to the Chief.

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¹⁶ 1.3.13

Use of Force Information

History

March 2, 2021 – Replaces Use of Force Policy (Chapter 1-3) issued January 8, 2019 and General Order - GO-01 - 1.1.2021 Use of Force per Police Reform Bill S2963 issued on 1/1/2021.

January 8, 2019 – Replaces Use of Force Policy (Chapter 1-3) issued November 3, 2016.

November 3, 2016 – Replaces Use of Force Policy (Chapter 1-3) issued April 2, 2015.

April 2, 2015 – Replaces Use of Force Policy (Chapter 1-3 issued April 1, 2013.

April 1, 2013 – Replaces Use of Force Policy (Chapter 1-3) issued December 18, 2012.

December 18, 2012 – Replaces Use of Force Policy (Chapter 1-3) issued January 11, 2012.

January 11, 2012 – Replaces UOF-001 issued July 12, 2010.

July 12, 2010 – Replaces UOF-001 issued January 8, 2002 and replaces "Bedford Police Department Policy for Pepper Aerosol Restraint Spray" issued in February 1996.

Review Date

This Policy is scheduled for review every year and updated as necessary.